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Homeowners Association

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

In re:

JAMIE LYNN GALLIAN,

Debtor.

Case No. 8:21-bk-11710-SC

Chapter 7 Proceeding

**PRELIMINARY OPPOSITION TO
“AMENDED” MOTION TO AVOID
LIEN (DOCKET NO. 244)**

Zoom Hearing:

Date: November 15, 2022

Time: 1:00 p.m.

Place.: Courtroom 5C
U.S. Bankruptcy Court
411 W. Fourth Street
Santa Ana, CA 92708

**TO THE HONORABLE SCOTT C. CLARKSON, UNITED STATES
BANKRUPTCY JUDGE, THE UNITED STATES TRUSTEE, THE TRUSTEE AND HIS
COUNSEL, AND ALL PARTIES IN INTEREST:**

The Huntington Beach Gables Homeowners Association (“HOA”) hereby brings this Preliminary Opposition to Debtor’s “Amended” Motion to Avoid Lien (Docket No. 244) filed on October 7, 2022 (“Amended’ Motion”) and respectfully represents as follows:

I. PRELIMINARY OBJECTION

The HOA files this preliminary opposition to the “Amended” Motion out of an abundance of caution given that the Debtor has falsely represented to the Court under penalty of perjury that there were no timely oppositions to the “Amended” Motion. (Declaration that No Party Requested a Hearing on Motion, Docket No. 253.) There are several issues with the “Amended” Motion that the HOA will raise on or before November 1, 2022, which is the deadline for the HOA to respond. Among these issues is that the Motion being “amended” has already been ruled upon and denied by this Court on August 30, 2022. A true and correct copy of the Order Denying Debtor’s Amended Motion to Avoid Lien (Docket No. 207) is attached hereto as **Exhibit “A.”**

The following relevant docket events have occurred since the October 7, 2022 filing of the “Amended” Motion (Docket No. 244):

- On October 7, 2022, Debtor filed a Notice of Opportunity to Request a Hearing on the “Amended” Motion (Docket No. 245);
- On October 13, 2022, Debtor filed a four-page Notice of Motion with a hearing date of November 15, 2022 giving notice that “If you wish to oppose this Motion, you must file a written response with the court and serve a copy of it upon the Movant or Movant’s attorney . . . no less than fourteen (14) days prior to the above hearing date.” (Docket No. 246);
- On October 13, 2022, Debtor filed another four-page Notice of Motion with a hearing date of November 15, 2022 again giving notice that “If you wish to oppose this Motion, you must file a written response with the court and serve a copy of it upon the Movant or Movant’s attorney . . . no less than fourteen (14) days prior to the above hearing date.” (Docket No. 247);
- On October 13, 2022, the Clerk of Court entered a deficiency notice on Debtor’s filing as Docket No. 247 instructing Debtor to amend that notice to reflect a hearing date and time of November 15, 2022 at 11:00 a.m. (Docket No. 248);

- On October 13, 2022, the Clerk of Court entered a deficiency notice on Debtor's filing as Docket No. 246 instructing Debtor to amend that notice to reflect a hearing date and time of November 15, 2022 at 11:00 a.m. (Docket No. 249);
- The Court set a hearing on the "Amended" Motion for November 15, 2022 at 11:00 a.m. (Docket No. 250); and
- On October 13, 2022, Debtor filed another four-page Notice of Motion with a hearing date of November 15, 2022 again giving notice that "If you wish to oppose this Motion, you must file a written response with the court and serve a copy of it upon the Movant or Movant's attorney . . . no less than fourteen (14) days prior to the above hearing date" (Docket No. 252).

Despite three times giving notice to the HOA that a hearing is set on the "Amended" Motion and that the deadline to oppose the same is November 1, 2022, the Debtor has filed a Declaration that "[m]ore than 14 days have passed" since October 7, 2022 and that "a hearing is not required." (Docket No. 253.)

Debtor's conduct in filing the Declaration is mendacious, an abusive waste of time (not the least of which is the Court's time), and should not be permitted with impunity.

II. CONCLUSION

WHEREFORE, notice is hereby given that the HOA opposes the "Amended" Motion to Avoid Lien (Docket No. 244) in an opposition to be filed on or before November 1, 2022. Based on the legal authority and evidentiary support to be filed—including the fact that the original Motion that Debtor seeks to amend was already denied months ago—the "Amended" Motion must be denied and no order approving it entered before the November 15, 2022 hearing.

Respectfully submitted,

DATED: October 21, 2022

GOE FORSYTHE & HODGES LLP

By: /s/ Brandon J. Iskander

Robert P. Goe
Brandon J. Iskander
Attorneys for The Huntington Beach
Gables Homeowners Association

EXHIBIT A

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Attorneys for The Huntington Beach Gables Homeowners Association

FILED & ENTERED

AUG 30 2022

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY  DEPUTY CLERK

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA – SANTA ANA DIVISION

In re:

JAMIE LYNN GALLIAN,

Debtor.

Case No. 8:21-bk-11710-ES

Chapter 7 Proceeding

**ORDER DENYING DEBTOR'S
AMENDED MOTION TO AVOID LIEN**

[DOCKET NO. 147]

The Court having reviewed the Debtor's Amended Motion to Avoid Lien Under 11 U.S.C. § 522(f) [Docket No. 147] ("Motion"), the Huntington Beach Gables Homeowners Association's Opposition and Request for Hearing [Docket No. 178], and the Declaration of Brandon J. Iskander Regarding Debtor's Failure to Set Hearing on her Amended Motion to Avoid Lien Under 11 U.S.C. § 522(f) [Docket No. 205], and good cause appearing

IT IS ORDERED that the Motion is denied.

####



Erithe Smith
United States Bankruptcy Judge

Date: August 30, 2022

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 18101 Von Karman Avenue, Suite 1200, Irvine, CA 92612

A true and correct copy of the foregoing document entitled (*specify*): **PRELIMINARY OBJECTION TO APPLICATION FOR ISSUANCE OF ORDER TO SHOW CAUSE RE: CIVIL CONTEMPT FOR WILLFUL VIOLATION OF AUTOMATIC STAY AND THE COURT'S FARM OPERATOR ORDER** will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On October 21, 2022, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) October 21, 2022, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Jamie Lynn Gallian
16222 Monterey Ln Unit 376
Huntington Beach, CA 92649

Janine Jasso
PO Box 370161
El Paso, CA 79937

Michael D Poole
Feldsott & Lee
23161 Mill Creek Dr Ste 300
Laguna Hills, CA 92653

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) October 21, 2022, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

- The Scott Clarkson, USBC, 411 West Fourth Street, Suite 5130, Santa Ana, CA 92701
- (SUSPENDED DUE TO COVID 19 PROTOCOLS)

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 21, 2022
Date

Kerry A. Murphy
Printed Name

/s/Kerry A. Murphy
Signature

TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

- **Bradford Barnhardt** bbarnhardt@marshackhays.com, bbarnhardt@ecf.courtdrive.com, kfrederick@ecf.courtdrive.com
- **Aaron E DE Leest** adeleest@DanningGill.com, danninggill@gmail.com; adeleest@ecf.inforuptcy.com
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- **Valerie Smith** claims@recoverycorp.com
- **United States Trustee (SA)** ustpreion16.sa.ecf@usdoj.gov